



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0426]

RIN 1625-AA00

Special Local Regulation; Swim for Special Operations Forces; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its special local regulations for recurring marine parades, regattas, and other events in Southern California Annual Marine Events for the San Diego Captain of the Port Zone. This final rule will add one new recurring special local regulation. This action is necessary to provide for the safety of life on the navigable waters during the event. This final rule will restrict vessel traffic in the designated areas during the events unless authorized by the Captain of the Port San Diego or a designated representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0426 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard; telephone 619-278-7656, email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 8, 2021, The Honor Foundation notified the Coast Guard that it will be hosting the Honor Foundation Swim for Special Operations Forces annually on a Saturday during the month of September. The regulated area would cover all navigable waters of the San Diego Bay, beginning at Glorietta Bay, continuing to Tidelands Park before proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum.

In response, on July 2, 2021 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Swim for Special Operations Forces; San Diego Bay, San Diego, CA (86 FR 35240). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this annual marine event. During the comment period that ended August 2, 2021 we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The Captain of the Port San Diego (COTP) has determined that potential hazards associated with the Honor Foundation Swim for Special Operations Forces annually on a Saturday during the month of September will present a safety of life

concern on navigatable waters. The purpose of this rule is to ensure safety of of life on the navigable waters in the safety zone before, during, and after the scheduled event. For the reasons stated above, we are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because enforcement of this safety zone is necessary to protect swimmers and vessels from the dangers associated with the swim race events planned for a Saturday in September 2021.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on the NPRM published July 2, 2021. The commentor proposed a method for intercepting and impounding vessels entering the safety zone. The Coast Guard was not proposing to specify how on scene representatives must handle situations where vessels enter the safety zone in this rulemaking. The purpose of this rulemaking is to establish the reoccurring annual safety zone and its location. The Coast Guard has existing regulations and policies that cover enforcement and this rulemaking does not intend to deviate from those practices. Accordingly, no changes to the regulatory text were made in response to this comment.

There is one nonsubstantive change in the regulatory text from the proposed rule to remove a typographical error, “SS”, in the event type.

This rule establishes a safety zone annually on a Saturday in September. The safety zone will cover all waters of San Diego Bay, from surface to bottom, beginning at Glorietta Bay, continuing to Tidelands Park, proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation, which would impact a small-designated area of the San Diego Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the areas, and the rule would allow vessels to seek permission to enter the areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area that would prohibit persons and vessels from transiting the regulated area during the swim event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. In §100.1101, amend table 1 to §100.1101, by adding an entry for “16. Swim for Special Operations Forces; San Diego Bay, San Diego, CA” to read as follows:

§100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

Table 1 to §100.1101

16. Swim for Special Operations Forces; San Diego Bay, San Diego, CA	
Sponsor	The Honor Foundation
Event Description	Swim race.
Date	Saturday in September.
Location	San Diego Bay, CA.
Regulated Area	All waters of San Diego Bay, from surface to bottom, beginning at Glorietta Bay, continuing to Tidelands Park, proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum.

Dated: August 27, 2021

T. J. Barelli,
Captain, U. S. Coast Guard,
Captain of the Port San Diego.

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